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PORT COMMISSION:

Concession Audit of C.M.P.
Service Partnership



Audit Number 02051
December 2, 2003



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER
AUDITS DIVISION

Ed Harrington
Controller
Monique Zmuda
Deputy Controller

December 2, 2003

Audit Number 02051

San Francisco Port Commission
Pier 1
San Francisco, CA 94111

President and Members:

The Office of the Controller presents its report concerning the audit of C.M.P. Service Partnership (C.M.P.). The Port of San Francisco (Port), acting under the authority of the Port Commission, maintained two month-to-month leases with C.M.P. to operate two public parking lots along the Embarcadero. This audit evaluates whether C.M.P. complied with the reporting and rental payment provisions of its leases from January 1, 2000, through December 31, 2002.

During the audit period, C.M.P. correctly reported gross receipts of \$1,719,056, and paid \$1,061,828 in rent, for both lots. However, the audit found that the Port used a number of parking spaces in one lot to provide Port employee and Port vehicle parking, and that the Port incorrectly issued monthly rent credits to C.M.P. as compensation for taking these parking spaces out of public use. These rent credits totaled \$73,132 during the audit period. We found that Port staff unnecessarily issued these credits, and did so without appropriate approval or documentation.

The Port's response is attached to this report. The Controller's Audits Division will be working with the Port to monitor the status of the recommendations made in the report.

Respectfully submitted,

Noriaki Hirasuna
Director

INTRODUCTION

BACKGROUND

C.M.P. Service Partnership (C.M.P.) entered two month-to-month leases in 1998 with the Port of San Francisco (Port), acting under the authority of the San Francisco Port Commission (Commission), to operate two parking lots on The Embarcadero in San Francisco for general public parking on Port property. One lease was for Seawall Lot 314 at Bay Street and The Embarcadero (Bay Street Lot). The other lease was for Seawall Lot 351 at Washington Street and The Embarcadero (Washington Street Lot). C.M.P. continues to operate the Bay Street Lot, but the Port terminated the lease for the Washington Street Lot effective March 31, 2003.

Under both leases, C.M.P. paid rent to the Port based on the greater of a specified monthly base rent or a percentage rent equal to 66 percent of C.M.P.'s monthly gross receipts. During the audit period, the monthly base rents ranged from \$7,266 to \$8,205 for the Bay Street Lot and from \$5,709 to \$6,447 for the Washington Street Lot.


According to a senior Port property manager, the Port started using the Washington Street Lot for Port vehicle and Port employee parking starting in January 2001. The Port reserved 65 of the 90 parking spaces in the lot and began issuing C.M.P. monthly rent credits of \$46.88 for each of these parking spaces. The credits totaled \$3,047 each month from January 2001 through the lease termination in March 2003. C.M.P. deducted the \$3,047 from its monthly rent payments.

SCOPE AND METHODOLOGY

The purpose of this audit was to determine if C.M.P. complied with the reporting and rental payment provisions of its leases with the Port for the period from January 1, 2000, through December 31, 2002.

To conduct the audit, we reviewed the applicable terms of the lease and the adequacy of C.M.P.'s procedures for collecting, recording, summarizing, and reporting its gross receipts to the Port. To

determine whether C.M.P. accurately reported its gross receipts to the Port, we tested on a sample basis C.M.P.'s monthly sales records, weekly sales reports, daily summary reports, daily parking ticket stubs, bank deposit records, and quarterly parking tax statements submitted to the City and County of San Francisco's Tax Collector. We also interviewed C.M.P. and Port personnel regarding controls over gross receipts and other areas, and performed other audit steps we considered necessary.



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AUDIT RESULTS

C.M.P. CORRECTLY REPORTED ITS GROSS RECEIPTS AND PAID ITS RENT, BUT THE PORT IMPROPERLY ISSUED SOME RENT CREDITS TO C.M.P.

From January 1, 2000, through December 31, 2002, C.M.P. correctly reported gross receipts of \$1,719,056 and paid \$1,061,828 in rent to the Port for the two parking lots C.M.P. leased from the Port. However, Port staff improperly issued some monthly rent credits to C.M.P. for the Washington Street Lot, which resulted in C.M.P. paying less than the total rent owed to the Port. The table below shows C.M.P.'s reported gross receipts and rent paid to the Port, as well as the rent credits.

TABLE

Gross Receipts Reported and Rent Paid
January 1, 2000, Through December 31, 2002

Year	Gross Receipts	Rent Paid (Note 1)	Rent Credits (Note 2)
Bay Street Lot			
January 1, 2000, through December 31, 2000	\$396,622	\$261,771	\$0
January 1, 2001, through December 31, 2001	377,422	249,099	0
January 1, 2002, through December 31, 2002	<u>271,520</u>	<u>179,311</u>	<u>0</u>
Sub-total	1,045,564	690,181	0
Washington Street Lot			
January 1, 2000, through December 31, 2000	317,758	209,721	0
January 1, 2001, through December 31, 2001	202,105	96,823	36,566
January 1, 2002, through December 31, 2002	<u>153,629</u>	<u>65,103</u>	<u>36,566</u>
Sub-total	673,492	371,647	73,132
Total	\$1,719,056	\$1,061,828	\$73,132

- Notes: 1. Rent was based on 66 percent of gross receipts less any rent credits issued by the Port.
2. Rent credits were \$3,047.20 per month for a total of \$36,566 annually.

For 24 months of the audit period, the Port used 65 parking spaces in the Washington Street Lot for Port employee and Port vehicle parking, reducing the number of parking spaces available to

C.M.P. from 90 to 25. The Port gave C.M.P. a monthly rent credit of \$46.88 per stall, or \$3,047 each month. According to the Port property manager responsible for managing the C.M.P. lease, the amount of the monthly credit for each parking stall was based on the monthly parking rate charged by C.M.P. at the time, less the amount of parking tax and less the expected 66 percent rent that C.M.P. would have had to pay to the Port. Port representatives could not provide us with written authorization of the credits approved by the Commission. The Port acted improperly by not obtaining Commission approval to modify the lease or issue the rent credits.

In improperly issuing rent credits to C.M.P. for the use of the parking spaces in this way, the Port failed to apply a relevant provision in C.M.P.'s lease for the Washington Street Lot. This lease provision provides that the base rent shall be subject to adjustment to reflect changes in the use of the lot due to changes in the size of the lot, and that the base rent shall be adjusted proportionately based upon the extent to which the size changes the number of useable parking spaces. If the Port had applied this provision, the result would have been a proportionate reduction of the base rent only. If the base rent had been reduced in this way, C.M.P. would have owed the Port \$444,505 in rent, which is \$72,858 more than the \$371,647 rent paid by C.M.P. This amount differs slightly from the \$73,132 in rent credits issued to C.M.P. because, for one month during the audit period, the percentage rent owed by C.M.P. was less than the base rent applied but more than the lower base rent as required by this lease provision.

C.M.P. had the option to terminate the lease at any time by giving 30 days written notice to the Port, if C.M.P. did not wish to continue leasing the reduced size lot from the Port.

THE PORT SHOULD REQUIRE ADDITIONAL CONTROLS TO PREVENT REVENUE LOSS

According to C.M.P. representatives, all potential revenues for the Bay Street Lot are not being collected by C.M.P. On this lot, customers insert payment into an automatic ticket machine that records and issues receipts for all transactions. The lot is attended when it is expected to be busy so that the attendant can make change for customers and to prevent lost revenues. C.M.P. personnel explained to us that there are two principal activities that result in lost revenue at this unenclosed lot.

First, users of the lot sometimes fail to pay during times that the lot is unattended, which includes weekday evenings and weekends. Second, individuals posing as parking attendants collect and pocket parking fees from unsuspecting patrons during times the lot is unattended. A C.M.P. representative estimated that individuals posing as parking attendants steal \$200 to \$300 in parking payments on busy weekend nights in this manner. Another C.M.P. representative estimated that the two problems result in a two percent to five percent loss in revenue. However, there appears to be no reasonable way to verify the accuracy of these estimates.

The Port's lease with C.M.P. for the Bay Street Lot does not require C.M.P. to perform periodic patrols to verify that the parking fee has been paid by every vehicle on the lot, nor does it require that this lot be attended. C.M.P. informed us that it does not perform regular patrols of the lot, and that it would not be cost beneficial to attend the lot at all times. The Port senior property manager concurred that it would likely not be cost beneficial for C.M.P. to keep the lot attended at all times, but he did note that other similar, nearby lots are leased from the Port by other operators who conduct periodic patrols of their lots when the lots are not attended.

The lease contract provides no incentive or requirement for C.M.P. to attend the lot at all times, or to periodically patrol the lot. The lease is structured so that the Port bears most (66 percent) of the loss of non-payment and fraudulent activity, whereas the cost to prevent these problems would be borne by C.M.P.

We also learned that C.M.P. did not always record and report the revenues from the Bay Street Lot on a daily basis, as sound business practice would dictate. Instead, C.M.P. sometimes recorded and reported revenue from this lot twice or three times a week when, for example, the C.M.P. manager was on vacation. Although customers of the Bay Street Lot pay for their parking through an automatic ticket machine, daily closeouts and reporting of revenues should be required as a basic revenue control. C.M.P. staff performed daily closeouts of revenues at the Washington Street Lot, for example.

RECOMMENDATIONS

The Port should take the following actions:

- Work with the Office of the City Attorney to assess the feasibility of recovering from C.M.P. the \$73,132 in rent credits improperly issued during the audit period, as well as an additional \$9,142 in rent credits issued during the period from January through March 2003, for a total of \$82,274.
- Establish operating guidelines to require C.M.P. to attend the Bay Street Lot at specified times, and to require C.M.P. to periodically patrol the lot when it is unattended. Change the terms of C.M.P.'s lease to include these requirements, if necessary.
- Change the lease terms or otherwise require C.M.P. to close out and account for its receipts daily.

We conducted this review according to the standards established by the Institute of Internal Auditors. We limited our review to those areas specified in the audit scope section of this report.

Staff: Robert Tarsia, Audit Manager
Kathy Buckley

PORT OF FRANCISCO RESPONSE TO THE AUDIT:

C.M.P. Audit

Findings and Recommendations - Response

Rent Credits to C.M.P. - Washington Street Lot

A property manager negotiated the rent credit arrangement with C.M.P. at the direction of the senior management of the Port. At the time, the parking lot was open to the general public and leased to C.M.P. under a month-to-month lease approved by the Port Commission. This lot was the site of a former Chevron service station and had underground storage tanks for petroleum products that had to be upgraded, replaced or removed by the end of 1998. The lot was identified as a potential site for accessory parking to be used in connection with the Ferry Building rehabilitation. Its use was also impacted by other construction and development projects in the area at the time (i.e. the Embarcadero Roadway and the conversion of Pier 1 to a Class A office complex). These same project activities required the Port to relocate several times the parking areas allocated for Port-owned and Port employee vehicles.

C.M.P. held a month-to-month lease that could be terminated by either party at any time by giving 30 days written notice. In 2000, C.M.P. and Port staff negotiated an arrangement (in lieu of termination) whereby C.M.P. continued to operate and manage the entire lot while losing exclusive use of approximately 70% of the parking spaces for Port related vehicles. It was not desirable and not cost effective for the Port to manage the lot itself. The Washington Street lot continued to be operated with an attendant for approximately eight hours a day; and the fixed rent credit negotiated by Port staff compensated the operator for keeping an attendant on the premises. The amount credited to C.M.P. for each employee and Port vehicle space was equal to the employee parking fee of \$46.88. The Port continued to collect this monthly parking fee from its employees. The attendant was also allowed to release unused spaces for public parking. Port staff believes that it negotiated an arrangement that was reasonable and equitable to both parties. With this negotiated arrangement, neither party found it necessary to terminate the existing lease.

The provision in the lease cited by the auditor for re-sizing the lot and the re-set of base rent was inserted to consider the specific impact of an expected re-alignment of the premises for the Embarcadero Roadway project. Such base rent re-set would actually have little effect on C.M.P.'s total percentage obligation, as its monthly percentage rent based on gross receipts usually far exceeded that minimum (base) rent obligation. Use of this re-sizing provision to effect the Port's subsequent occupation of a portion of the lot would not have been equitable to C.M.P. It is customary in the real estate industry to credit a lessee for any loss of use of the leased premises caused by the landlord.

The foregoing negotiated arrangement with C.M.P. was memorialized only by correspondence enclosed with C.M.P.'s January 2001 base rent payment. This negotiated arrangement should have been more formally documented and approved. Port staff will seek the Port Commission's approval. The C.M.P. lease was terminated in March 2003 and the lot was converted from general public parking to accessory parking for the Ferry Building.

Additional Revenue Controls - Bay Street Lot

We concur with the audit recommendations concerning revenue controls and will review these issues with C.M.P. We agree that C.M.P. should record its revenues from the Bay Street Lot on a daily basis. The Port's standard percentage rent lease provisions for commercial tenants require the tracking of daily cash receipts. While it is probably not cost effective to keep the Bay Street Lot attended at all times, we will evaluate the situation with C.M.P. and establish operating guidelines for C.M.P. to attend the lot at specified times and to periodically patrol the lot when it is unattended, as recommended.

John Woo
Fiscal Officer - Port of San Francisco

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